

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**TEX PAT, LLC,**  
*Relator,*

**v.**

**(1) EATON CORPORATION,  
(2) AEROQUIP INTERNATIONAL INC.,  
(3) EATON AEROQUIP INC.,  
(4) EATON AEROQUIP LLC, and  
(5) EATON HYDRAULICS LLC,**  
*Defendants.*

**Civil Action No. 5:10-cv-187**

**JURY TRIAL DEMANDED**

**ORIGINAL COMPLAINT FOR FALSE PATENT MARKING**

Relator Tex Pat, LLC (“Relator”) makes the following allegations against Eaton Corporation, Aeroquip International Inc., Eaton Aeroquip Inc., Eaton Aeroquip LLC, and Eaton Hydraulics LLC (collectively, “Eaton” or “Defendant”):

**NATURE OF THE ACTION**

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

**PARTIES**

2. Relator is a Texas limited liability company having a principal place of business at 2300 Richmond, Suite 345, Houston, Texas 77098-3265. Relator has appointed Philip D. Racusin, 2300 Richmond Avenue, Suite 345, Houston, TX 77098-3265, as its agent for service of process.

3. On information and belief, Eaton Corporation is an Ohio corporation with its principal place of business at Eaton Center, 1111 Superior Avenue, Cleveland, OH 44114-2584. Eaton Corporation has appointed CT Corporation System, 1300 E. Ninth Street, Cleveland, OH 44114, as its agent for service of process.

4. On information and belief, Aeroquip International Inc. is a subsidiary of Eaton Corporation and is a Delaware corporation. Aeroquip International Inc. has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process.

5. On information and belief, Eaton Aeroquip Inc. is a subsidiary of Eaton Corporation and is Michigan Corporation. Eaton Aeroquip Inc. has appointed The Corporation Company, 30600 Telegraph Road, Ste 2345, Bingham Farms, MI 48025, as its agent for service of process.

6. On information and belief, Eaton Aeroquip LLC is a subsidiary of Eaton Corporation and is an Ohio company. Eaton Aeroquip LLC has appointed CT Corporation System, 1300 E. Ninth Street, Cleveland, OH 44114, as its agent for service of process.

7. On information and belief, Eaton Hydraulics LLC is a subsidiary of Eaton Corporation and is a Delaware company. Eaton Hydraulics LLC has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process.

#### **JURISDICTION AND VENUE**

8. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or

advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

10. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

### **FACTS**

11. Eaton has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising patents, including, by way of example only, U.S. Patent No. 4,366,746 (“the ’746 Patent”), a true and correct copy of which is attached as Exhibit A, respectively, in connection with Defendant’s products and/or related product packaging and advertisements, including, by way of example only, various AQP<sup>®</sup> Hose and Startlite<sup>®</sup> Hose products, as illustrated in Exhibits B-H.

12. The ’746 Patent (Exhibit A), which is titled “Pressurized Hydraulic Fluid System Using Cross-Linked Chlorinated Polyethylene Hose,” was filed in the United States on July 21, 1977 and issued on January 4, 1983. The ’746 Patent is a continuation of S/N 442,379, filed February 14, 1974.

13. The ’746 Patent expired, at the very latest, on January 4, 2000.

14. When the ’746 Patent expired, all future rights in that patent ceased to exist.

15. Subsequent to expiration of the '746 Patent, Eaton has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising this patent in combination with various of its AQP<sup>®</sup> Hose and Startlite<sup>®</sup> Hose products. *See, e.g., Exhibit B* (containing, in part, product literature, bearing a printed on date of November 2009, and marking, affixing, and/or advertising “patented” AQP<sup>®</sup> Hose and Startlite<sup>®</sup> Hose products in combination with the '746 Patent); *Exhibit C* (containing, in part, product literature, bearing a printed on date of March 2007 and providing: “Materially different, AQP hose is constructed with elastomeric materials that carry the U.S. Patent No. 4,366,746”); *Exhibit D* (containing product literature, bearing a printed on date of May 2006, and marking, affixing, and/or advertising the “patented” AQP<sup>®</sup> Hose products in combination with the '746 Patent); *Exhibit E* (containing product literature, in part, bearing a printed on date of May 2006, and marking, affixing, and/or advertising “patented” AQP<sup>®</sup> Hose products in combination with the '746 Patent); *Exhibit F* (containing, in part, product literature, having an electronic creation date of March 6, 2008, a modification date of July 22, 2009, and providing: “Materially different, AQP hose is constructed with elastomeric materials that carry the U.S. Patent No. 4,366,746”); *Exhibit G* (containing, in part, product literature, having a printed on date of August 2003, and marking, affixing, and/or advertising the “patented” AQP<sup>®</sup> Hose products in combination with the '746 Patent); *Exhibit H* (containing product literature, having a printed on date of August 2003, and marking, affixing, and/or advertising the “patented” Startlite<sup>®</sup> Hose products in combination with the '746 Patent).

16. Eaton is a large, sophisticated company. *See, e.g., Exhibit I* at p. 2 (containing Eaton's 2009 Annual Report, providing that “Eaton is a global technology leader in

electrical components and systems for power quality, distribution and control; hydraulics components, systems and services for industrial and mobile equipment; aerospace fuel, hydraulics and pneumatic systems for commercial and military use; and truck and automotive drivetrain and powertrain systems for performance, fuel economy and safety.”); *see also, id.* at p. 1 (indicating Eaton is traded on New York Stock Exchange).

17. Eaton has, and/or routinely retains, sophisticated legal counsel. *See, e.g., Exhibit I* at p. 8 (listing Eaton’s general counsel).

18. Eaton has decades of experience applying for, obtaining, licensing, and/or litigating patents. *See, e.g., Exhibit I* at p. 3 (indicating “Eaton’s policy is to file applications and obtain patents for its new products including product modifications and improvements.”); *see also, id.* (“Eaton develops and acquires new intellectual property on an ongoing basis and considers all of its intellectual property to be valuable.”).

19. Eaton knows, and at the very least reasonably should know, that the above expired patent does not cover any of the above Eaton products, or any products whatsoever. *See, e.g., Exhibit I* at p. 3 (“Eaton’s products are marketed with a portfolio of patents . . . that expire at various dates in the future.”).

20. As a result of its false marking, Eaton has injured the United States Government, including its sovereign interest, and Defendant’s existent and potential competitors, as well as the general public, including Relator—a member of the general public incurring the time and expense of enforcement. *See, e.g., Exhibit I* at p. 5 (“Protecting Eaton’s intellectual property rights is critical to its ability to compete and succeed. [Eaton] owns a large number of United States and foreign patents and patent applications . . . that are

necessary, and contribute significantly, to the preservation of Eaton's competitive position in various markets."").

### **CLAIM**

21. Relator incorporates paragraphs 1–20, as if fully set forth herein. Eaton has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its products, including various AQP<sup>®</sup> Hose and Startlite<sup>®</sup> Hose products, with intent to deceive the public.

### **PRAYER FOR RELIEF**

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. §292; and

- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: November 1, 2010

Respectfully submitted,

By: /s/ Hao Ni

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